IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 34358 of 2004(M)

AGAINST THE ORDER DATED 17-08-2004 IN IA 1816/2004 IN OS.50/2000 of MUNSIFF COURT, MANJERI

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PETITIONER:

KANDAMPALLI SATHYABHAMA,
D/O.KANDAMPALLI DEVAKI AMMA, AGED 59 YEARS,
R/O.KANDAMPALLI HOUSE, KARUVAMBRAM AMSOM,
MELAKKAM DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.PUSHPAKUMAR
K.M.SATHYANATHA MENON

RESPONDENTS:

KANDAMPALLI SANTHAKUMARI,
D/O.KANDAMPALLI DEVAKI AMMA, R/O. KANDAMPALLI HOUSE, KARUVAMBRAM AMSOM, MELAKAM DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

BY
SRI.R.RAJESH KORMATH
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SMT.SANJANA R.NAIR
SRI.JAYKAR.K.S.
SRI.RAHUL VARMA
SRI.V.S.ROBIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 34358 of 2004 APPENDIX

PETITIONER'S EXHIBITS

Ext.P1: True copy of the petition dated 17-8-2004 filed by the petitioner before the Munsiff Court , Manjeri, as I.A. No. 1816/2004 in O.S. No. 50/2000

Ext.P2: True copy of the counter affidavit dated 18-9-2004 filed by the respondent to Ext.P1 application for remitting the advocate Commissioner's plan and report

Ext.P3: True copy of the order dated 20-10-2004 of the Munsiff Court Manjeri in I.A. No. 1816/2004 in O.S. No. 50/2000

//True copy//

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PIUS.C.KURIAKOSE. J.

W.P.(C) No. 34358 of 2004

Dated this the 4th day of June 2007

JUDGMENT

Ext.P3 order passed by the learned Munsiff on an application filed by the defendant/ writ petitioner for remitting Commissioner's report and plan is under challenge. Heard Sri. K.M.Sathyanatha Menon counsel for the petitioner and Sri.Rajesh counsel for the respondents. Sri. Sathyanatha Menon would invite my attention to paragraphs 5, 6 and 8 of Ext.P1. Ext.P1 is the affidavit which was submitted by the petitioner in support of the application submitted by the petitioner for Commissioner's report and plan. It is submitted therein that commissioner should have been directed to conduct fresh inspection and submit a fresh report at least in the context of those objections raised in those paragraphs. Sri.Rajesh counsel for the respondents submits that the Commission report and plan which was sought to be remitted by the petitioner in the instant application is remitted . Commission report and plan submitted by the Commissioner, was remitted to the commissioner on two previous occasions and the present plan is a third one. According to him it is prepared with the help of the Taluk Surveyor, and does not warrant any correction at all. Having considered all rival submission ands having examined Ext.P3 order I am of the view that it cannot be said that Ext.P3 warrants correction under Article 227 of the supervisory jurisdiction. The

petitioner does not have to be aggrieved by Ext.P3 order The learned Munsiff himself has observed that at the time of evidence adduced by the petitioner to point out all infirmities and with observations takes care of the petitioner's grievance. . It is made clear that when evidence is taken and the commissioner is examined the petitioner will have the permission to cross-examine the commissioner with respect to the objection raised in Ext.P1 and on the basis of the evidence adduced by the commissioner. The learned counsel for the petitioner find any warrant for ..... Once again the confirmation of Ext. P3 will not stand in the way of..... It is needless to mention that is the Commissioner would not examined the petitioner will have to take steps for examining the Commissioner as a witness in the Court.

PIUS.C.KURIAKOSE,JUDGE

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